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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,152	04/08/2004	David Turner	005127.00211	6673
22909	7590	04/03/2006	EXAMINER	
BANNER & WITCOFF, LTD. 1001 G STREET, N.W. WASHINGTON, DC 20001-4597			TOMPKINS, ALISSA JILL	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 04/03/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/820,152	TURNER, DAVID	
	Examiner	Art Unit	
	Alissa J. Tompkins	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33, 43-51 and 57-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33, 43-51 and 57-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/08/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/30/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Applicant's amendment filed on 1/05/06 has been received. Claims 1-33, 43-51, and 57-62 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 17-25, 28-31, 43-47, and 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan (U.S. 6,131,202) in view of Arbeyre et al. (U.S. 5,497,513). Yan discloses an article of headwear that is made out of multi-axially stretchable fabric that can stretch in a direction of a circumference of the crown providing an easy fit for the head of the wearer (Column 1, 48-52). The cap is comprised of a crown portion with a plurality of panels made out of an elastic cloth material as well as a visor board covered with a stretchable fabric, which is attached to the crown and expands in response to the stretching of the crown (Column 2, 27-34). The cap also comprises a strip including a plurality of perforations made out of a stretchable foam material (Figure 6, 26) that is covered by fabric and attached to the surface of the crown. Adjacent to the interior surface of the cap is a flap including first

and second surfaces (Figure 5, 26 and 28), which is formed of an extension of the first elastic material/crown portion. The strip is located on the first surface of the flap (Figure 4) and the second surface is associated with a sweatband. The first surface of the flap faces away from the head while the second surface faces the head of the wearer (Figure 4-6). The flap is folded and stitched to the inside surface of the crown (Figure 4, 24, 30, 33) forming the headliner of the cap. However, Yan is missing a strip of a second elastic material made of silicone that is screen printed onto the surface of the crown. Arabeyre shows a remedial support appliance for medical use on an arm or leg that comprises an elasticated knit portion extending upward by an elasticated garter band 20 (Column 4, 33-55). An elasticated braid 21 is covered by a pattern 23 made of anti-slip material. The pattern is preferably made of silicone and is continuously deposited on the inside periphery of the elasticated garter band (Column 5, 1-5). It would have been obvious to one of ordinary skill in the art to be motivated to combine Yan and Arabeyre. The elastic in Yan's hat allows for size adjustment so that wearer's of various head sizes can be accommodated. Arabeyre uses the elasticity in the sock to hold the sock in position on the wearer as well as offering a custom fit for each individual. Both pieces of art solve the same problem of maintaining the garment on the wearer and therefore are considered equivalents in the art.

Claims 13-16, 26-27, 32-33, and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan (U.S. 6,131,202) and Arabeyre (U.S. 5,497,513) in further view of Wang (U.S. 2003/0226193). Yan and Arabeyre disclose the invention

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substantially as applied in claims 1-12, 17-25, 28-31, 43-47, and 57-62 above.

However, they are missing a visor board having L-shaped slits. Wang shows a stretchable cap structure having two L-shaped slits located on the visor board of the cap (Figure 4). The slits allow the end portions of the visor board to extend under a central portion of the visor board. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Wang to modify Yan and Arabeyre in order to provide a cap having slits in the visor giving the visor the ability to conform, expand, and allow a greater movement of freedom for the wearer.

Response to Arguments

Applicant's arguments with respect to claims 1-33, 43-51, and 57-62 have been considered but are moot in view of the new ground(s) of rejection. It is noted that applicant's arguments regarding the prior art reference of Yan are not persuasive.

Applicant submits that Yan does not teach or suggest an elastic material that is screen printed onto a surface of the crown. The MPEP 2112.02 states that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

Arabeyre shows a second elastic material made of silicone that could be adhered to the

remedial support appliance in numerous ways such as by the process of screen printing. Therefore, when combining the references of Yan and Arabeyre all of the claim limitations presented by the applicant concerning screen printing are met.

In regard to claim 3, when interpreted in the broadest possible sense, can be understood by the device of Yan. The claim language requires that the strip includes a plurality of perforations. Yan shows a strip made of a thin foam polymer having an open-air cell porosity (Column 4, 29-30). It is noted by the examiner that "perforations" are defined by Merriam Webster dictionary as "holes" and therefore meets the limitations as claimed by the applicant.

In regard to claim 8, when interpreted in the broadest possible sense, can be understood by the device of Yan. The claim language requires that the headwear includes a flap that is an extension of the first elastic material, and the strip is located on the extension. Yan shows a strip made out of a stretchable foam material that is covered by fabric and attached to the surface of the crown. The strip is sewn to the crown and is therefore considered an extension and meets the limitations as claimed by the applicant.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cho (U.S. 6,119,273) shows a free-size cap with a size adjusting band. Park (U.S. 6,408,443) shows a reversible visor having a plurality of slits in the

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visor board. Calvo (U.S. 5,920,910) shows a sweatband for use in a cap having a crown portion.

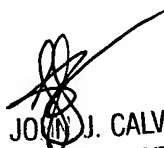
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alissa Tompkins
Patent Examiner
Art Unit 3765
March 21, 2006

AJT


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700